

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Petition of Valley Telephone Cooperative, Inc.)	
For Limited Waiver and Extension of its)	
Porting and Pooling Obligations)	
)	

To: The Commission

PETITION OF VALLEY TELEPHONE COOPERATIVE, INC.
FOR LIMITED WAIVER AND EXTENSION

Valley Telephone Cooperative, Inc. (“Valley”), by its attorneys, and pursuant to Sections 1.3 and 52.23(e) of the rules and regulations of the Federal Communications Commission (“FCC” or “Commission”), requests a limited waiver and extension of its intermodal porting and pooling obligations, as established by the Commission in its November 10, 2003 *Intermodal Order*.¹ Specifically, Valley requests that the Commission clarify that its porting and pooling obligations are those of a carrier providing service outside of the top 100 Metropolitan Statistical Areas (“MSAs”) or, in the alternative and to the extent necessary, that the Commission waive and extend Valley’s compliance deadline for implementing intermodal Local Number Portability (“LNP”) in its wireline service area until of May 24, 2004.

¹ *In re Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 03-284 (rel. November 10, 2003) (“*Intermodal Order*”).

I. BACKGROUND

On November 10, 2003, the Commission issued its *Intermodal Order* that, *inter alia*, required wireline carriers located in the top 100 MSAs to be capable by November 24, 2003 of porting numbers to wireless carriers that do not have a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned. Wireline carriers serving areas outside of the top 100 MSAs were given until May 24, 2004 to achieve such capability.²

Valley is a rural telephone company as defined by the Communications Act of 1934, as amended (the "Act"). Valley provides local exchange service and intraLATA toll service to approximately 6,700 access lines in the southern plains of Texas in a service area encompassing 7,300 square miles. In addition, Valley provides exchange access service to interexchange carriers ("IXCs"). All of these services are provided pursuant to tariffs. Valley's service area has a subscriber density of 0.92 lines per square mile. Valley's telephone service area includes portions of the following Texas counties: Atascosa, Brooks, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, La Salle, Live Oak, McMullen, Starr, Webb, Willacy, Zapata and Zavalla. With the exception of small portions of Atascosa and Hidalgo counties, where Valley serves a total of 35 and 700 customers, respectively, none of Valley's telephone service area falls inside one of the top 100 MSAs.³

Despite the extreme rural nature of Valley's service area, Valley has received letters from Verizon Wireless and Sprint PCS ("CMRS Carriers") requesting that Valley implement LNP.

² *Intermodal Order* at ¶ 29.

³ Atascosa County was only recently added to the San Antonio MSA by the Office of Management and Budget's ("OMB") June 2003 MSA definition revisions. Hidalgo County comprises the McAllen-Edinburg-Pharr, Texas MSA. See <http://www.census.gov/population/estimates/metro-city/03mfips.txt>.

Neither Verizon, nor Sprint currently has an interconnection arrangement or agreement with Valley, nor have they established local numbers, local interconnection facilities or a local point of presence (“POP”) in Valley’s rural service area. Calls from Valley customers to Sprint or Verizon are toll calls that are carried by the customer’s presubscribed (“PICed”) interexchange carrier (“IXC”). Porting to Sprint or Verizon would require Valley to port numbers across rate center boundaries and would result in massive customer confusion because Valley customers would incur “surprise” toll charges for calling numbers that appear to be, and have previously been, local numbers.

Valley notified the CMRS Carriers that it was not required to implement geographic location portability or to implement portability in a remote area that a requesting carrier does not actually intend to serve. Verizon sent a letter to Valley with a generic response that did not respond to Valley’s concerns other than to indicate that Verizon is unwilling to enter into interconnection negotiations. Although Valley is working toward implementation of LNP, consistent with current obligations for LECs, it is impossible for Valley to implement intermodal LNP on the terms advocated by Verizon by November 24, 2003.

By virtue of its limited service to portions of Atascosa County in the San Antonio, Texas MSA and portions of Hidalgo County in the McAllen-Edinburg-Pharr, Texas MSA, Valley is considered to be providing local exchange service within the “top 100” MSAs and is subject to the November 24, 2003 deadline for implementing intermodal LNP. But for this limited service, Valley would not otherwise have been required to provide intermodal portability to the overwhelming majority (nearly 90%) of its customers until May 24, 2004. Accordingly, Valley requests that the Commission waive and extend Valley’s porting and pooling compliance

deadlines to make them consistent throughout its service area and treat Valley as a carrier providing service outside of the top 100 MSAs.

II. ARGUMENT

A. The Commission Should Rule That Valley's Obligations Are Those of a Carrier Providing Service Outside of the Top 100 MSAs

In establishing the November 24 intermodal portability deadline in its *Intermodal Order*, the FCC expressly noted that “many wireline carriers outside the top 100 MSAs may require some additional time to prepare for implementation of intermodal portability” and recognized the need for a “transition period [to] help ensure a smooth transition for carriers operating outside of the 100 largest MSAs and provide them with sufficient time to make necessary modifications to their systems.”⁴ Thus, the Commission waived the intermodal portability deadline until May 24, 2004 for wireline carriers located outside of the top 100 MSAs.⁵

In the present case, the overwhelming majority (approximately 90%) of Valley's telephone service area and customers fall outside of the top 100 MSAs. That a small fraction of Valley's total customer base happens to be located in portions of two counties that are in the top 100 MSAs does not alter the fact that Valley needs exactly the same transition period to provide intermodal portability as it would have needed had it not served those customers. Valley's network uses a host/remote configuration. Accordingly, Valley must become capable of intermodal porting throughout its entire service area in order to become capable of intermodal porting in the limited portions of Atascosa and Hidalgo counties that it serves.

In many different contexts, the Commission has granted waivers of its rules or applied different rules in cases where either the number of people affected by the rule or the impact of

⁴ *Id.*, ¶ 29.

⁵ *Id.*

variance from the rule was shown to be *de minimis*. For example, *de minimis* waivers have been granted in the context of the Commission's dialing parity rules,⁶ tariff and access charge rules,⁷ jurisdictional separations rules,⁸ affiliate transactions rules,⁹ cellular service area rules,¹⁰ PCS build out rules,¹¹ CMRS spectrum cap rules,¹² short spacing rules,¹³ duopoly and cross-ownership rules,¹⁴ anti-trafficking rules,¹⁵ signal carriage and blackout rules,¹⁶ and program access rules.¹⁷

⁶ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Petition of U S WEST Communications, Inc. for Waiver of Dialing Parity Dates Established in March 23, 1999 Dialing Parity Order*, 1999 FCC LEXIS 4863 (October 1, 1999).

⁷ *CenturyTel of Northwest Arkansas, LLC and Century Tel of Central Arkansas, LLC*, 15 FCC Rcd 25437 (2000).

⁸ *GTE Midwest Incorporated*, 9 FCC Rcd 7789 (1994); *GTE Southwest Incorporated*, 9 FCC Rcd 7785 (1994); *United Utilities, Inc.*, 9 FCC Rcd 7793 (1994); *Telephone Utilities of Washington, Inc.*, 7 FCC Rcd 3007 (1992).

⁹ *US West, Inc.*, 15 FCC Rcd 4400 (2000).

¹⁰ *Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules*, Second Report and Order, 7 FCC Rcd 2449 (1992).

¹¹ *Monet Mobile Networks, Inc.*, 17 FCC Rcd 18381 (2002); *Minnesota PCS Limited Partnership*, 17 FCC Rcd 16371 (2002).

¹² *Cingular Wireless LLC*, 24 CR 874 (2001).

¹³ *Rural Initiatives For Shelter And Education; American Indian Broadcast Group, Inc.* 8 FCC Rcd 2472, (1993); *Baltimore Radio Show, Inc.*, 5 FCC Rcd 3712 (1990).

¹⁴ *Iowa State University Broadcasting Corporation*, 9 FCC Rcd 481 (1993); *Hubbard Broadcasting, Inc.*, 2 FCC Rcd 7374 (1987); *Acadian Television Corp.*, 51 RR2d 743 (1982); *KSOO-TV Inc.*, 43 FCC2d 879 (1973); *Meridian Broadcasting Partnership*, 8 FCC Rcd 8399 (1993).

¹⁵ *SLT Cable T.V., Inc.* 10 FCC Rcd 8598 (1995).

¹⁶ *Buckeye Cablevision, Inc.*, 8 FCC Rcd 7944 (1993); *Capitol Cablevision Corporation*, 71 FCC 2d 281 (1979); *Village CATV, Inc.*, 39 FCC 2d 288 (1973); *Continental Cablevision of Lansing, Inc.*, 57 FCC 2d 86 (1975); *Orangeburg Cable TV, Inc.*, 50 RR 2d 538 (1981); *Putnam All Channel Cable Vision, Inc.*, 70 FCC 2d 695 (1978); *Eastern Connecticut Cable Television, Inc.*, 51 FCC 2d 921 (1975); *Missouri Valley Communications, Inc.*, 58 FCC 1101 (1976); *Harbor-View Cable TV, Inc.*, 42 FCC 2d 1067 (1973); *Diversified Communications Investors, Inc.*, 37 FCC 2d 981 (1972).

¹⁷ *Petition of Walt Disney Company for Waiver of Program Access Rules*, 9 FCC Rcd 4007 (1994).

In the present case these *de minimis* standards are satisfied. Not only do the 35 Atascosa County and 700 Hidalgo County customers represent a small portion of Valley's total customer base, they also represent an infinitesimally small fraction of the total number of households in each of those counties and in each of their respective MSAs. For example, Valley's 35 Atascosa County customers represent less than three tenths of one percent (0.27%) of the 12, 816 households located in that county and a barely measurable fraction of the 601,265 of households located in the San Antonio MSA.¹⁸ Likewise, Valley's 700 Hidalgo County customers represent less than one-half of one percent (0.45%) of the 156,824 households located in that county which is also the sole county comprising the McAllen-Edinburg-Pharr, Texas MSA.¹⁹ Granting the relief sought by Valley would have a negligible impact on the Commission's stated policy of promoting intermodal competition and would provide Valley with same transition period that the Commission granted to similarly situated rural carriers. Accordingly, Valley requests that the Commission rule that Valley's intermodal porting obligations are those of a carrier providing service outside of the top 100 MSAs. Alternatively, and to the extent necessary, Valley requests a limited waiver and extension of its intermodal porting obligations until May 24, 2004.

B. Good Cause Exists for an Extension of Valley's Compliance Deadlines

Pursuant to Rule Section 1.3 the Commission may waive a rule for good cause shown. In addition, pursuant to Rule Section 52.23(e) a local exchange carrier may request an extension of

¹⁸ According to the U.S. Census, the San Antonio MSA encompasses the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson. See <http://www.census.gov/population/estimates/metro-city/03mfips.txt>. The number of households in each of the counties presently comprising the San Antonio MSA is as follows: Atascosa (12,816); Bandera (7,010); Bexar (488,942); Comal (29,066); Guadalupe (30,900); Kendall (8,613); Medina (12,880) and Wilson (11,038). See <http://quickfacts.census.gov/qfd/states/39000.html>.

¹⁹ See <http://www.census.gov/population/estimates/metro-city/03mfips.txt> and <http://quickfacts.census.gov/qfd/states/39000.html>.

its LNP implementation deadline by demonstrating that extraordinary circumstances beyond its control prevent it from being able to comply with the deadline.²⁰ Specifically, the carrier must: (1) demonstrate why it is unable to meet the deadline, (2) explain what steps it has taken to comply, (3) identify particular switches, (4) provide a time when deployment will be complete in the switch(es), and (5) propose milestones for compliance.²¹

Good cause exists for a waiver and extension of Valley's intermodal portability deadline. Prior to the Commission's *Intermodal Order*, Valley did not know how the Commission would deal with the complexities of intermodal porting. Indeed, the Commission's *Intermodal Order* did not even deal with how wireline to wireless porting would be implemented and left those issues for a subsequent rulemaking. Thus, Valley found itself with two short weeks to implement intermodal portability from the time the FCC "clarified" the wireline to wireless porting obligation. This simply is not enough time to accomplish this task.

First and foremost, Valley will not have a legal way to route calls to wireless carriers that do not have a point of interconnection within the various rate centers where Valley's local numbers are provisioned. Under Texas law, Valley is prohibited from transporting local traffic beyond its certificated service area.²² Furthermore, Valley's existing exchange access tariff²³ and intrastate toll tariff²⁴ do not permit Valley to place local traffic on these trunks. It is illegal for Valley to unilaterally send local traffic over existing trunks that are governed by tariffs that only permit toll traffic to be carried on such trunks.

²⁰ See *Telephone Number Portability*, First Report and Order, 11 FCC Rcd 8352, ¶ 85 (1996) (*subsequent history omitted*).

²¹ See 47 C.F.R. § 52.23(e).

²² See attached Certificate of Public Convenience and Necessity. See also Texas Utilities Code §§ 54.001, 54.052.

²³ See Texas Statewide Telephone Cooperative Inc. Access Tariff at §§ 2.1.1.A. This tariff can be viewed at <http://tstci.org/tariff/access.html>.

²⁴ See generally, Valley Telephone Cooperative, Inc. General Exchange Tariff, Section 15.

There are also a number of ordering, back office, billing testing and staff training issues that must be resolved before intermodal portability can begin. For example, switch software must be loaded and configured. This includes, among other things, upgrading network to direct SS7 connectivity, upgrading switches to AIN 0.1 standards and provisioning switch location routing numbers. Valley must contract with a vendor for the Number Portability Administration Center, develop local service order procedures, register test and certify service order interfaces with wireless carriers, develop internal procedures for the installation and repair of ported numbers, develop and test billing processes for ported numbers, and determine and coordinate delivery of correct 911 information to its wireline 911 database vendor.

Valley is moving forward to implement intermodal portability as quickly as it can and believes that it will be able to provide intermodal portability on or before the May 24, 2004 deadline applicable to rural carriers. Valley plans to work with Verisign to handle out ports. Valley estimates that it will take Verisign approximately six to eight weeks to put arrangements in place to support intermodal portability. With the various Thanksgiving, Christmas and New Year holidays coming up, Valley believes that the end of January represents a realistic target for accomplishing this goal.

Likewise, Valley is in the process of establishing facilities with carriers who have requested porting so that the local traffic can be carried on such facilities. Valley estimates that, in cooperation with these carriers, local trunks can be established to legally carry the traffic. Alternatively, Valley will seek to amend its tariffs or put other arrangements in place that will allow it to comport with Texas law. Once these arrangements have been put into place, and assuming Valley is able to put facilities in places to handle the local traffic and/or amend its

tariffs, an additional 30 days will be required to test the system and resolve any routine problems that might arise.

Valley will make every effort to accomplish these tasks prior to the May 24, 2003 deadline. Barring any unforeseen problems, Valley anticipates being ready to provide intermodal porting by May 24, 2004. Therefore, Valley is requesting that the Commission apply the May, 2004 rural carrier deadline to Valley and treat it like all similarly situated rural telephone companies. This provides a date certain for compliance and should provide sufficient time for Valley to resolve any unanticipated problems that might arise during the course of implementation.

III. CONCLUSION

For the reasons discussed above, Valley respectfully requests that the Commission clarify that Valley's porting and pooling obligations are those of a carrier providing service outside of the top 100 MSAs. In the alternative, and to the extent necessary, Valley respectfully requests that the Commission waive and extend Valley's compliance deadlines and allow Valley to implement local number portability by no later than May 24, 2004.

Respectfully submitted,

VALLEY TELEPHONE COOPERATIVE, INC.

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November 21, 2003

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Declaration of Charles Gowder

I, Charles Gowder, do hereby declare under penalty of perjury the following:

1. I am the General Manager of Valley Telephone Cooperative, Inc.
2. I have read the foregoing "Petition of Valley Telephone Cooperative, Inc for Limited Waiver and Extension." I have personal knowledge of the facts set forth therein, and believe them to be true and correct.

Charles Gowder
Charles Gowder

November 21, 2003
Date

Public Utility Commission of Texas

Do These Presents Be It Known To All That

Halley Telephone Cooperative, Inc.

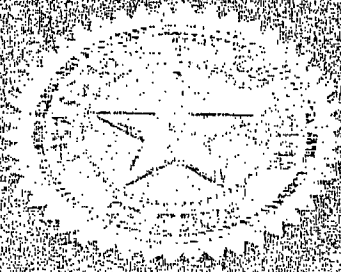
having duly applied for certification to provide telephone utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity

numbered 40888, to provide telephone utility service to that service area or those service areas designated by final Order or Orders duly entered by this Commission, which Order or Orders are on file at the Commission offices in Austin, Texas, and are matters of official record available for public inspection;

and be it known further that these presents do evidence the authority and the duty of this Grantee to provide such utility service in accordance with the laws of this State and the Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this 3rd day of April, 1978.



Roy J. Henderson

Roy J. Henderson
COMMISSION SECRETARY

